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THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Paper No. 12
DEB

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Fred G. Farago¹

Serial No. 75/708,835

George W. Hoover of Blakely Sokoloff Taylor & Zafman for
Fred G. Farago.

Idi Aisha Clarke, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Wendel, Bucher and Bottorff, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Applicant seeks registration of the mark SUPER I.Q.
PLUS for the following goods in International Class 32, as
amended, "fruit juices, fruit juice concentrates, fruit
drinks and fruit-flavored drinks."²

¹ On its submission of December 11, 2000, counsel filed the response under the heading of "American Fruit Processors," a corporation having the same address as applicant. However, there is nothing in the assignment records of the United States Patent & Trademark Office to suggest there has been a transfer of this application.

² Serial No. 75/708,835, filed May 17, 1999. The application is based on use in commerce under Trademark Act Section 1(a), 15 U.S.C. §1051(a), with March 16, 1999 alleged as the date of first use of the mark anywhere and March 16, 1999 alleged as the date of first use of the mark in commerce. While the application as filed included "vitamins and mineral supplements," applicant deleted these goods in order to avoid the instant refusal.

The Trademark Examining Attorney has refused registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), citing Registration No. 2,247,128, which is for the mark SUPER I.Q. and design as shown below:



for goods identified as "diet supplement tablets in softgel form containing natural ingredients in the nature of vitamin E, lecithin and marine lipid concentrate," as a bar to registration of applicant's mark:

When the refusal was made final, applicant filed this appeal. Applicant and the Trademark Examining Attorney have filed main briefs. No oral hearing was requested. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See In re E.I. du Pont de Nemours and Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Upon careful consideration of the evidence of record pertaining to these factors, we find as follows.

Applicant's mark is highly similar to the cited registered mark. The portion of the respective marks that prospective customers would likely remember and ask for is the "SUPER I.Q." portion of the marks. The design feature of registrant's mark must be viewed as a subordinate feature as it cannot be easily verbalized and would not be relied upon in calling for the goods. As noted by the Trademark Examining Attorney, the "PLUS" portion of applicant's mark has little source-indicating significance, and could well be seen as a product extension on registrant's part. This du Pont factor weighs strongly in favor of a finding of likelihood of confusion.

We turn next to a consideration of the relationship between the goods identified in applicant's application and those identified in registrant's registration. As has often been stated, it is not necessary that the parties' respective goods be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods are related in some manner or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same

producer or that there is an association or connection between the producers of the respective goods. See In re Melville Corp., 18 USPQ2d 1386 (TTAB 1991); In re International Telephone & Telegraph Corp., 197 USPQ 910 (TTAB 1978). Moreover, the greater the degree of similarity between the parties' marks, the lesser the degree of similarity required in the parties' goods to support a finding of likelihood of confusion.

While registrant's identification of goods covers several specific dietary supplements, applicant's identification of goods in its application as amended, is limited to fruit juices and drinks. In support of her contention that applicant's goods are related to registrant's goods, the Trademark Examining Attorney has submitted printouts of several subsisting use-based registrations, owned by several different companies, which include both dietary supplements and fruit juices and drinks in their respective identifications of goods. These registrations are evidence that the respective goods are of a type which may emanate from a single source. See In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993); In re Mucky Duck Mustard Co., Inc., 6 USPQ2d 1467 (TTAB 1988).

Moreover, while applicant has deleted the "vitamins and mineral supplements" from its own use-based application

herein, that original identification of goods supports that relevant purchasers will find it reasonable to conclude that dietary supplements and fruit drinks might originate from a single source, or from sources which are otherwise affiliated or connected. Accordingly, we find that the Trademark Examining Attorney has sufficiently demonstrated a commercial relationship between applicant's goods and registrant's goods in this case.

In conclusion, with nearly identical trademarks applied to related goods, we find a likelihood of confusion. To the extent that the issue of the likelihood of confusion is close, we are obligated to resolve doubts in favor of the registrant and prior user. In re Hyper Shoppes, 837 F.2d 463, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Decision: The Section 2(d) refusal is affirmed.